

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3625 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRABHUBHAI RANCHHODBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

Mr.H.R.Prajapati for M/S THAKKAR ASSOC. for Petitioner
Mr. Nigam Shukla, learned Addl.P.p. for the
respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 14/10/96

1. This Special Civil Application is directed against the petitioner's detention order dated 19-4-96 passed by the District Magistrate, Kheda under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 20-4-96 and since then the petitioner is under detention lodged in Junagadh Special Jail, Junagadh.

2. The present Special Civil Application was filed on 14-5-96 and on 15-5-96 Rule returnable on 24-6-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

3. The grounds of detention enclosed with the detention order show that 5 criminal cases were registered against the petitioner under the Bombay Prohibition Act at Mehamadabad Police Station in the years 1994 and 1995. After noticing the allegations of these criminal cases against the petitioner, the detaining authority has considered that the petitioner was engaged in unauthorised business of foreign liquor and had created an atmosphere of terror amongst the innocent citizens and the person and property of the people living in the area of the petitioner's activities was not safe. Four witnesses have also made statements against the petitioner to show that the petitioner was engaged in the unauthorised business of foreign liquor, the petitioner alongwith his associates has been threatening the witnesses and innocent people, he is a known Dada in the area and because of his fear the witnesses are not prepared to come forward and make complaint or file reports against the petitioner and hence the public life of the people in this area has been disturbed. On the basis of the aforesaid allegations and materials, the detaining authority was satisfied that the proceedings of externment etc. many not be expedient and are not sufficient to prevent the petitioner from carrying on his anti social activities. It has also been noticed by the detaining authority that in the criminal cases he gets bailed out again and again and, therefore, looking to the continuing activities of the petitioner, the detaining authority chose to detain the petitioner under the Act. The detaining authority has also invoked S.9(2) of the Act on the ground that the witnesses were scared and frightened of the petitioner and had requested for keeping their identity secret.

4. The detention order has been challenged on several grounds, but the learned counsel for the petitioner has laid stress on the ground that the statements of the witnesses were recorded against the petitioner on 23rd, 24th, 25th and 26th of March, 1996 and all the statements had also been verified on 28-3-96, but the order of detention was passed as late as on 19-4-96 and that there was a delay of 10 months in passing the detention order after the date of the last offence said to have been committed by him on 6-6-95. This delay of

10 months has not been explained by the respondents nor any explanation has been given for the period between the date of verification of the statements and the date of the passing of the detention order. Thus the delay in passing the detention order remains wholly unexplained.

A specific ground has been taken in the petition that while in the grounds of detention S.9(2) has been invoked, but in the copies of the documents, which have been supplied to the petitioner, below one of the statements the name of the witness Ketan S. Soni is mentioned and in the statements of the other 3 witnesses their identity is disclosed. This clearly shows that the detaining authority has not applied its mind while passing the detention order and the claim of the privilege under S.9(2) of the Act can not be said to be germane in the facts of the present case. The factual position on this aspect has also not been disputed by the respondents and the detaining authority.

5. This Special Civil Application can therefore be disposed of on these two grounds and I need not deal with the ground that the order has been passed on the ground of breach of public order against the petitioner. Whereas the delay of 10 months in passing the detention order on 19-4-96 after the date of the last offence i.e. 6-6-95 remained unexplained and there is no explanation for the period beyond 28-3-96 i.e. the date on which the statements have been verified and the detention order dated 19-4-96 and the facts show that there is a total non application of mind with regard to the claim of privilege under S.9(2) of the Act, the present Special Civil Application succeeds.

6. Accordingly this Special Civil Application is allowed. The impugned detention order dated 19-4-96 passed by the District Magistrate, Kheda is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.